

JUL 31 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JAVIER MARTINEZ-HERNANDEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-74850

Agency No. A73-840-815

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Javier Martinez-Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for cancellation of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of constitutional violations in immigration proceedings, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001), and we vacate and remand.

Martinez-Hernandez argues that the forfeiture of a unique educational opportunity by an intellectually gifted United States citizen child amounts to an exceptional and extremely unusual hardship. As the BIA has not ruled on whether a United States citizen child's special needs in school can present an exceptional and extremely unusual hardship for the purposes of cancellation of removal, we remand to the BIA to issue a ruling addressing this issue. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam) (where the BIA has not yet considered an issue, the proper course is to remand to allow the Board to consider the issue in the first instance).

PETITION FOR REVIEW VACATED and REMANDED.